

REMARKS

The present application has been reviewed in light of the Office Action dated September 14, 2009. Claims 34-42 are presented for examination, of which Claims 34, 37, and 40 are in independent form. Claims 34-42 have been amended to define aspects of Applicant's invention more clearly. Support for the claim amendments may be found, for example, in FIGS. 15 and 16, and the discussions thereof in the specification.¹ Favorable reconsideration is requested.

The Office Action rejects Claims 34-42 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,400,719 (*Chimura et al.*) in view of U.S. Patent No. 5,940,598 (*Strauss et al.*), in view of U.S. Patent Application Publication No. 2004/0139209 (*Mussman et al.*), and further in view of U.S. Patent Application Publication No. 2002/0095516 (*Nada*). For at least the following reasons, Applicant submits that independent Claims 34, 37, and 40, together with the claims dependent therefrom, are patentably distinct from the cited prior art.

The aspect of the present invention set forth in Claim 34 is a communication apparatus. The communication apparatus includes a facsimile communication unit that performs facsimile communications using a facsimile protocol, a central processing unit, a memory unit coupled to the central processing unit, a Voice over Internet Protocol (VoIP) connection unit, an IP communication unit, an IP address obtaining unit, a determination unit, and a control unit.

The Voice over Internet Protocol (VoIP) connection unit establishes a VoIP channel using a VoIP protocol through an Internet Protocol (IP) network. The IP communication unit is adapted to communicate image data to a communication partner station using a

¹ Any examples presented herein are intended for illustrative purposes and are not to be construed to limit the scope of the claims.

predetermined file transmission protocol through the IP network. Based on a telephone number of the communication partner station, the IP address obtaining unit obtains an IP address of the communication partner station from a Session Initiation Protocol (SIP) proxy server.

Notably, the determination unit determines whether a data communication through the IP network uses the predetermined file transmission protocol. In accordance with a determination by the determination unit, the control unit selects the facsimile communication unit or the IP communication unit. If the determination unit determines that the data communication through the IP network uses the predetermined file transmission protocol, the control unit selects the IP communication unit. If the determination unit determines that the data the communication through the IP network does not use the predetermined file transmission protocol, the control unit selects the facsimile communication unit.

If the control unit selects the IP communication unit, the control unit causes the IP communication unit to communicate the image data to the communication partner station using the predetermined file transmission protocol using the IP address of the communication partner station obtained by the obtaining unit. If the control unit selects the facsimile communication unit, the control unit causes the facsimile communication unit to communicate the image data to the communication partner using the facsimile protocol via the VoIP communication channel established by the VoIP connection unit using the IP address of the communication partner station obtained by the obtaining unit.

By virtue of the operation of the determination and control units of Claim 34, if the data communication cannot be performed through the IP network using the predetermined file transmission protocol, the communication can be performed by the facsimile communication unit via the VoIP communication unit using the IP network. It is possible, therefore, to reduce

communication costs compared to conventional communication apparatuses, which make the data communication through a public switched network, for example, if the data communication cannot be performed through the IP network using the predetermined file transmission protocol.

Chimura et al. is understood to relate to a method for a communication system allowing a plurality of telephone terminals to communicate via the Internet (*see* col. 1, lines 10-13). As best understood by Applicant, *Chimura et al.* fails to teach or suggest determining whether a data communication through an IP network uses a predetermined file transmission protocol. Moreover, *Chimura et al.* is not understood to teach or suggest that image data is communicated to a communication partner using a facsimile protocol via a VoIP communication channel, if a determination is made that a data communication through an IP network does not use a predetermined file transmission protocol.

Mussman et al. is understood to relate to a method for routing calls through a network (*see* paragraph 1). Nothing has been found in *Mussman et al.* that is believed to remedy the deficiencies of *Chimura et al.* identified above.

Strauss et al. is understood to relate to a network server that provides multi-mode communications via a combination of a public switched telephone network and a public packet data network (*see* col. 1, lines 6-11). Nothing has been found in *Strauss et al.* that is believed to remedy the deficiencies of *Chimura et al.* identified above.

Nada is understood to relate to a telephone system and a telephone apparatus that use the Internet (*see* paragraph 1). Nothing has been found in *Nada* that is believed to remedy the deficiencies of *Chimura et al.* identified above.

In summary, Applicant submits that a combination of *Chimura et al.*, *Mussman et al.*, *Strauss et al.*, and *Nada*, assuming such combination would even be permissible, would fail

to teach or suggest a communication apparatus that includes a “determination unit adapted to determine whether a data communication through the IP network uses the predetermined file transmission protocol,” and a “control unit adapted to select the facsimile communication unit or the IP communication unit, in accordance with a determination by the determination unit, wherein, if the determination unit determines that the data communication through the IP network uses the predetermined file transmission protocol, the control unit selects the IP communication unit, and, if the determination unit determines that the data communication through the IP network does not use the predetermined file transmission protocol, the control unit selects the facsimile communication, and wherein, if the control unit selects the IP communication unit, the control unit causes the IP communication unit to communicate the image data to the communication partner station using the predetermined file transmission protocol using the IP address of the communication partner station obtained by the obtaining unit, and, if the control unit selects the facsimile communication unit, the control unit causes the facsimile communication unit to communicate the image data to the communication partner using the facsimile protocol via the VoIP communication channel established by the VoIP connection unit using the IP address of the communication partner station obtained by the obtaining unit,” as recited in Claim 34. Accordingly, Applicant submits that Claim 34 is patentable over the cited art, and respectfully request withdrawal of the rejection under 35 U.S.C. § 103(a).

Independent Claims 37 and 40 include features sufficiently similar to those of Claim 34 that these claims are believed to be patentable over the cited art for at least the reasons discussed above. The other rejected claims in the present application depend from one or another of independent Claims 34, 37, and 40 and are submitted to be patentable for at least the

same reasons. Because each dependent claim also is deemed to define an additional aspect of the invention, however, individual reconsideration of the patentability of each claim on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and an early passage to issue of the present application.

Applicant's undersigned attorney may be reached in our New York Office by telephone at (212) 218-2100. All correspondence should be directed to our address listed below.

Respectfully submitted,

/Leonard P Diana/
Leonard P. Diana
Attorney for Applicant
Registration No. 29,296

FITZPATRICK, CELLA, HARPER & SCINTO
1290 Avenue of the Americas
New York, New York 10104-3800
Facsimile: (212) 218-2200

FCBS_WS 4409522_1.DOC